

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Omowale Ashanti Shabazz,)	
)	Case No. 3:13-cv-0091
Plaintiff,)	Judge Kevin H. Sharp
)	Magistrate Judge Knowles
v.)	Jury Demand
)	
Derrick Schofield, <i>et al.</i>)	
)	
Defendants.)	

MOTION TO SET ASIDE
ENTRY OF DEFAULT (D.E. 142, 164)

Defendants Derrick Schofield, Wanda Chaffin, Charles Short, Misty Gregg, James Lundy, Clifford Tressler, Harold Angel, and Sherry Freeman, by and through the undersigned Senior Counsel for the Tennessee Attorney General's Office, hereby move this Court to set aside the Entry of Default as to each of the above-named defendants:¹ This motion is made pursuant to Federal Rule of Civil Procedure 55(c). Defendants would respectfully submit that setting aside the entry of default is appropriate for the following reasons:

¹ In the interest of time, the entry of default against defendants Angela Combs and Chris Davis will be addressed in a separate motion as the undersigned is in the process of obtaining affidavits with regard to their respective situations.

First, as to defendant Derrick Schofield, due to a series of irregularities in the manner in which the summons and complaint were received, and further irregularities in processing the package, legal counsel at the TDOC were not aware that the Commissioner had been properly served and as a result, counsel was never made aware either. (Plaintiff had made a previous, unsuccessful attempt to serve Commissioner Schofield, and the undersigned was never made aware of the second successful attempt.) An appearance has been made on his behalf, and an answer has been filed.

With regard to defendants, Wanda Chaffin and Sherry Freeman, they have not been served with process. With regard to defendants Short, Greg, Lundy, Tressler and Angel, service was accepted on behalf of these individuals by an agent at the Northeast Correction Complex. The agent returned all of the service documents to the plaintiff. The agent was not asked to take further action, nor was he asked to accept service on any additional defendants. The undersigned was notified that service had been accepted for these defendants, but erroneously believed that once the plaintiff had provided the necessary documentation to this Court, that an entry would be made on the docket evidencing the successful completion of service. This assumption was made in

error. As such, the undersigned did not believe that service had been affected and no response was made on behalf of these defendants.

The failure to respond was not done in an attempt to purposely delay the adjudication of this matter, or impede the plaintiff's right to pursue this case. Because these errors were not made in bad faith, the defendants respectfully request that the entry of default against them be set aside.

Respectfully submitted,

ROBERT E. COOPER, JR., BPR# 010934
Attorney General & Reporter

S/ Jennifer L. Brenner

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CERTIFICATE OF SERVICE

I hereby certify that a full and complete copy of the foregoing Motion to Set Aside Entry of Default (D.E. 142, 164) was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties, including the plaintiff, will be served by regular U.S. mail on this the 30th day of January, 2014:

Omowale Shabazz (Fred Dean)
TDOC #244104
NECX
P.O. Box 5000
Mountain City, Tennessee 37683

S/ Jennifer L. Brenner

Jennifer L. Brenner
Senior Counsel